

110TH CONGRESS  
1ST SESSION

# H. R. 2529

To establish efficiency resource standards for retail electricity and natural gas distributors, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. MARKEY introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To establish efficiency resource standards for retail electricity and natural gas distributors, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. RETAIL ELECTRIC AND GAS UTILITY EFFI-**  
4       **CIENCY POLICIES.**

5       (a) IN GENERAL.—The Public Utility Regulatory  
6       Policies Act of 1978 is amended by adding the following  
7       after section 609:

1 **“SEC. 610. EFFICIENCY RESOURCE STANDARDS FOR RE-**  
2 **TAIL ELECTRICITY AND NATURAL GAS DIS-**  
3 **TRIBUTORS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) BASE QUANTITY.—The term ‘base quan-  
6 tity’, with respect to a retail electricity or natural  
7 gas distributor, means the total quantity of electric  
8 energy or natural gas delivered by the retail elec-  
9 tricity or natural gas distributor to retail customers  
10 during the most recent calendar year for which in-  
11 formation is available.

12 “(2) COMBINED HEAT AND POWER SYSTEM.—  
13 The terms ‘combined heat and power system’ and  
14 ‘CHP system’ mean a system that—

15 “(A) uses the same energy source for the  
16 simultaneous or sequential generation of elec-  
17 trical power, mechanical power, or both, in com-  
18 bination with the generation of steam or other  
19 forms of useful thermal energy (including heat-  
20 ing and cooling applications);

21 “(B) produces at least 20 percent of its  
22 total useful energy in the form of thermal en-  
23 ergy, and at least 15 percent of its total useful  
24 energy in the form of electrical or mechanical  
25 power (or a combination thereof);

1           “(C) except for systems designed for oper-  
2           ation on cellulosic biomass fuel, has a marginal  
3           net heat rate of no more than 7,500 Btu/kWh,  
4           calculated on a higher heating value basis;

5           “(D) is designed for continuous operation;  
6           and

7           “(E) if generating electricity provides such  
8           electricity primarily for use for a facility or  
9           group of facilities located near the point where  
10          the electricity is generated, and from which net  
11          wholesale sales of electricity are not in excess of  
12          50 percent of total annual generation.

13          “(3) CUSTOMER FACILITY.—The term ‘cus-  
14          tomer facility’ means an end-use consumer of elec-  
15          tricity or natural gas served by a retail electricity or  
16          natural gas distributor.

17          “(4) DEEMED SAVINGS.—The term ‘deemed  
18          savings’ means an estimate of the average per unit  
19          savings from installation of specific common energy  
20          efficiency measures. Deemed savings estimates shall  
21          be based on field studies or billing analyses of sav-  
22          ings at a sample of sites where the specific measure  
23          is installed.

24          “(5) ELECTRIC AND NATURAL GAS SAVINGS  
25          CORPORATION.—The term ‘Electric and Natural Gas

1 Savings Corporation’ means the corporation certified  
2 pursuant to subsection (d)(7)(C).

3 “(6) ELECTRICITY.—(A) The term ‘electricity  
4 savings’ means any of the following:

5 “(i) Reductions in end-use electricity con-  
6 sumption achieved by a customer facility rel-  
7 ative to—

8 “(I) consumption at the same facility  
9 in a base year, as defined in rules issued  
10 by the Secretary;

11 “(II) in the case of replacement of  
12 equipment at the end of its life or of new  
13 equipment that does not replace existing  
14 equipment, consumption of new equipment  
15 of average efficiency, as defined in rules  
16 issued by the Secretary; or

17 “(III) in the case of a new facility,  
18 consumption at a reference facility, as de-  
19 fined in rules issued by the Secretary.

20 “(ii) Reductions in distribution system  
21 losses of electricity achieved by a retail elec-  
22 tricity distributor relative to losses attributable  
23 to new or replacement distribution system  
24 equipment of average efficiency, as defined in  
25 rules issued by the Secretary.

1 “(iii) Any combination of the foregoing.

2 “(B) The reductions referred to in subpara-  
3 graph (A) may be due to—

4 “(i) energy efficiency measures, including  
5 demand response measures that result in im-  
6 proved energy efficiency;

7 “(ii) combined heat and power systems as  
8 calculated under subparagraph (D);

9 “(iii) recycled energy; or

10 “(iv) in the case of distribution system  
11 losses, upgraded distribution transformers, up-  
12 graded electrical connectors, high temperature  
13 superconductors, or other measures to reduce  
14 such losses as specified in rules issued by the  
15 Secretary.

16 “(C) The reductions in end-use electricity con-  
17 sumption at a customer facility shall be reduced on  
18 a Btu basis by the Btu equivalent of any associated  
19 increases in fuel consumption at such facility. The  
20 conversion of any such fuel consumption increase to  
21 an equivalent amount of electricity on a Btu basis  
22 shall be determined by the Secretary based on the  
23 average heat rate of central station generation in the  
24 region (accounting for average transmission and dis-

1       tribution losses in the region), as determined in  
2       rules issued by the Secretary.

3               “(D) For a combined heat and power (CHP)  
4       system, the electricity savings shall be the electricity  
5       and mechanical power generated by the CHP system  
6       net of fuel used by the system, where the fuel used  
7       is the product of—

8                       “(i) the electricity and mechanical power  
9       generated by the CHP system;

10                      “(ii) the net-effective heat rate for the  
11       CHP system; and

12                      “(iii) the inverse of the average heat rate  
13       of central station generation in the region, tak-  
14       ing into consideration avoided transmission and  
15       distribution losses resulting from on-site gen-  
16       eration as determined under subparagraph (C).

17               “(7) NATURAL GAS SAVINGS.—(A) The term  
18       ‘natural gas savings’ means—

19                      “(i) reductions in end-use natural gas con-  
20       sumption achieved by a customer facility rel-  
21       ative to—

22                               “(I) consumption at the same facility  
23       in a base year, as defined in rules issued  
24       by the Secretary;

1 “(II) in the case of replacement of  
2 equipment at the end of its life or of new  
3 equipment that does not replace existing  
4 equipment, consumption of new equipment  
5 of average efficiency, as defined in rules  
6 issued by the Secretary; or

7 “(III) in the case of a new facility,  
8 consumption at a reference facility, as de-  
9 fined in rules issued by the Secretary;

10 “(ii) reductions in leakage, operational  
11 losses, and gas fuel consumption in the oper-  
12 ation of a gas distribution system achieved by  
13 a retail gas distributor relative to such losses in  
14 a base year, as defined in rules issued by the  
15 Secretary; or

16 “(iii) any combination of the foregoing.

17 “(B) The natural gas savings may be due to—

18 “(i) energy efficiency measures;

19 “(ii) recycled energy; or

20 “(iii) in the case of gas distribution system  
21 losses, technologies and practices as specified in  
22 rules issued by the Secretary including meas-  
23 ures recommended for gas distribution systems  
24 by the Natural Gas STAR Program adminis-  
25 tered by the Environmental Protection Agency.

1           “(C) The reductions in natural gas consump-  
2           tion shall be reduced on a Btu equivalent basis by  
3           any associated increases in the consumption of elec-  
4           tricity or other substitute fuels by a customer facility  
5           or a natural gas distributor, as determined under  
6           rules issued by the Secretary. The conversion of any  
7           such increase in the consumption of electricity or  
8           other fuels to an equivalent amount of natural gas  
9           consumption on a Btu basis shall be determined by  
10          the Secretary based on the average heat rate of cen-  
11          tral station electric generation in the region and av-  
12          erage transmission and distribution losses in the re-  
13          gion, as determined under rules issued by the Sec-  
14          retary.

15          “(8) NET EFFECTIVE HEAT RATE.—The term  
16          ‘net effective heat rate’ means a ratio, the numer-  
17          ator of which is the higher heating value of the in-  
18          crement of fuel required by a CHP system to  
19          produce electricity and mechanical power, over and  
20          above the fuel that would be required to produce the  
21          equivalent thermal output of the CHP system by a  
22          system without power generation, expressed in Brit-  
23          ish thermal units, and the denominator of which is  
24          the power output of the CHP system, expressed in  
25          kilowatt-hours.



1           “(9) PERFORMANCE STANDARD.—The term  
2           ‘performance standard’ means the performance  
3           standard for energy savings established under sub-  
4           section (b).

5           “(10) RECYCLED ENERGY.—The term ‘recycled  
6           energy’ means electrical or mechanical power, or  
7           both, or thermal energy produced by modifying an  
8           industrial or commercial system that was in place  
9           prior to January 1, 2007, such that the modified  
10          system—

11                 “(A) recaptures energy that would other-  
12                 wise be wasted from sources, including—

13                         “(i) waste heat from industrial proc-  
14                         esses, natural gas compressor stations, and  
15                         other sources;

16                         “(ii) pressure in a fluid or gas system  
17                         including but not limited to steam, natural  
18                         gas, and water; and

19                         “(iii) blast furnace, coke oven, carbon  
20                         black, and petrochemical process waste  
21                         gas, or pollution control projects, including  
22                         thermal oxidizers and gas flares; and

23                 “(B) uses equipment and technologies in-  
24                 cluding—

1 “(i) back-pressure turbines in parallel  
2 with existing pressure-reducing valves in  
3 steam, water and gas systems;

4 “(ii) organic Rankine, Stirling, or  
5 Kalina cycle heat engine systems driven by  
6 waste heat; or

7 “(iii) heat recovery steam generators  
8 with steam turbine generators that recover  
9 waste heat.

10 “(11) RETAIL ELECTRICITY OR NATURAL GAS  
11 DISTRIBUTOR.—The term ‘retail electricity or nat-  
12 ural gas distributor’ means a person (including a  
13 Federal, State, or local entity) that—

14 “(A) distributes electric energy or natural  
15 gas to consumers in the United States for a cal-  
16 endar year, including electricity or natural gas  
17 supplied by unregulated suppliers, regardless of  
18 whether such suppliers are affiliated or unaffili-  
19 ated with the distributor; and

20 “(B) sold not less than 800,000 megawatt-  
21 hours of electric energy or 1 billion cubic feet  
22 of natural gas to consumers in the United  
23 States for purposes other than resale during the  
24 preceding calendar year.

1 For purposes of this paragraph, electricity or nat-  
2 ural gas sold at wholesale to large end-use customers  
3 shall be included but natural gas sold to wholesale  
4 electric generators to generate electric power for re-  
5 sale shall not be not included.

6 “(b) PERFORMANCE STANDARD.—

7 “(1) IN GENERAL.—Each retail electricity or  
8 natural gas distributor shall undertake electricity  
9 and natural gas savings measures in each calendar  
10 year beginning with 2009 that produce electricity  
11 and natural gas savings as a percentage of the dis-  
12 tributor’s base quantity at the applicable rate speci-  
13 fied in paragraph (5).

14 “(2) SAVINGS.—The savings described in para-  
15 graph (1) shall represent savings realized in the  
16 specified year from measures implemented in that  
17 year and all preceding years beginning with 2007.

18 “(3) LIMITS.—Savings from combined heat and  
19 power systems, recycled energy, and electricity or  
20 natural gas distribution system measures may be  
21 used by a distributor to satisfy no more than 50 per-  
22 cent of the applicable savings specified for any year  
23 in the table contained in paragraph (5).

24 “(4) COMPLIANCE.—(A) Each retail electricity  
25 or natural gas distributor subject to this subsection

1 may use any electricity or natural gas savings meas-  
2 ures available to the distributor to achieve compli-  
3 ance with the performance standard established  
4 under this section, on the condition that the elec-  
5 tricity and natural gas savings achieved by such  
6 measures are calculated and verified pursuant to the  
7 rules issued under subsection (c).

8 “(B) A retail electricity or natural gas dis-  
9 tributor may demonstrate compliance with the per-  
10 formance standard through the accumulation of—

11 “(i) electricity or natural gas savings cred-  
12 its achieved by such electricity or natural gas  
13 distributor and certified under clause (i) of sub-  
14 section (d)(2)(A);

15 “(ii) electricity or natural gas savings cred-  
16 its obtained by purchase under subsection  
17 (d)(6);

18 “(iii) electricity or natural gas savings  
19 credits borrowed against future years under  
20 subsection (d)(7); or

21 “(iv) any combination of credits described  
22 in clauses (i), (ii), and (iii).

23 “(5) APPLICABLE RATES.—(A) The applicable  
24 rates referred to in paragraph (1) are as follows:

<b>“Year</b>	<b>Electricity Savings (%)</b>	<b>Natural Gas Savings (%)</b>
2009	0.25	0.20
2010	0.75	0.50
2011	1.50	0.80
2012	2.25	1.15
2013	3.00	1.50
2014	4.00	2.00
2015	5.00	2.50
2016	6.00	3.00
2017	7.00	3.50
2018	8.00	4.00
2019	9.00	4.50
2020	10.00	5.00

1           “(B) At least 2 years before the beginning of  
2           any year after 2020, the Secretary, after notice and  
3           opportunity for comment, shall set the applicable  
4           rate, taking into consideration the economic and en-  
5           vironmental benefits of the energy savings and the  
6           cost of the savings measures.

7           “(c) DETERMINATION OF COMPLIANCE RULES.—Not  
8           later than 1 year after the date of enactment of this sec-  
9           tion, the Secretary shall issue rules that describe the  
10          means to be used to calculate and verify compliance with  
11          the performance standard that include each of the fol-  
12          lowing:

13           “(1) Procedures and standards for defining and  
14           measuring electricity savings and natural gas sav-  
15           ings from customer facility end-uses and from utility

1 distribution systems that occur in a calendar year  
2 (including measures implemented in previous cal-  
3 endar years beginning in 2007). At a minimum,  
4 these procedures and standards shall—

5 “(A) specify the types and categories of ef-  
6 ficiency measures that will be eligible for certifi-  
7 cation under subsection (d)(2);

8 “(B) require that energy consumption esti-  
9 mates for customer facilities or portions thereof  
10 in the base and current years be adjusted, when  
11 appropriate, to account for changes in weather,  
12 level of production, and building area;

13 “(C) allow energy consumption estimates  
14 from discrete processes and equipment within  
15 industrial facilities in the base and current  
16 years to be adjusted for factors identified by  
17 rule that may be responsible for significant  
18 year-to-year changes;

19 “(D) allow energy consumption estimates  
20 from discrete processes and equipment within  
21 industrial facilities in the base and current  
22 years to be adjusted for factors identified by  
23 rule that may be responsible for significant  
24 year-to-year changes;

1           “(E) account for the useful life of energy  
2 saving measures;

3           “(F) include deemed savings values for  
4 commonly-used efficiency measures and make  
5 provision for such values to be periodically re-  
6 viewed and revised;

7           “(G) minimize the chances that more than  
8 one entity will claim credit for the same sav-  
9 ings; and

10          “(H) exclude savings that—

11           “(i) are attributable to measures or  
12 systems installed before January 1, 2007,  
13 or to modifications of processes or systems  
14 undertaken prior to January 1, 2007;

15           “(ii) are otherwise required by Fed-  
16 eral, State, local, or Indian tribal law or  
17 regulation;

18           “(iii) are achieved without the inter-  
19 vention of the electricity or natural gas dis-  
20 tributor or of any other entity seeking  
21 credits under paragraph (2)(A)(ii) of this  
22 Act, except as provided under subsection  
23 (e);

24           “(iv) are attributable to Federal,  
25 State, or local tax incentives, grants, loans,

1 or other public financial support for energy  
2 efficiency measures; or

3 “(v) have already been credited under  
4 this section to another entity.

5 “(2) Procedures and standards for verification  
6 of electricity or natural gas savings reported by re-  
7 tail electricity and natural gas distributors. At a  
8 minimum, such procedures and standards shall—

9 “(A) provide for periodic spot checks on a  
10 sample of sites to verify that measures are in  
11 place and functioning;

12 “(B) provide that savings estimates are  
13 calibrated with billing analysis or end-use me-  
14 tering on a sample of sites where technically  
15 feasible and economically justified; and

16 “(C) provide for the protection of cus-  
17 tomers’ proprietary information against unwar-  
18 ranted disclosure.

19 “(3) Requirements for the content and format  
20 of a biennial report from each retail electricity or  
21 natural gas distributor demonstrating the compli-  
22 ance of the distributor with the performance stand-  
23 ard, including a detailed description of the calcula-  
24 tion of electricity and natural gas savings to enable  
25 the appropriate regulatory authority to verify and



1 enforce compliance with the requirements of this sec-  
2 tion (including regulations issued under this sec-  
3 tion).

4 “(4) Provision for reviewing and revising the  
5 electricity and natural gas consumption of reference  
6 facilities and of new equipment of average efficiency  
7 at intervals of not greater than 4 years.

8 “(d) CREDIT AND TRADING SYSTEM.—

9 “(1) ESTABLISHMENT.—Not later than one  
10 year after the date of enactment of this section, and  
11 after consultation with the Administrator of the En-  
12 vironmental Protection Agency, the Secretary shall  
13 issue rules establishing a nationwide credit and cred-  
14 it trading system for electricity and natural gas sav-  
15 ings.

16 “(2) CREDITS.—

17 “(A) IN GENERAL.—In accordance with  
18 the rules issued under paragraph (1), the Sec-  
19 retary—

20 “(i) shall certify as credits, electricity  
21 and natural gas savings achieved by a re-  
22 tail electricity or natural gas distributor in  
23 a given calendar year if the savings comply  
24 with the rules issued under subsection  
25 (c)(1);

1 “(ii) shall certify as credits, customer  
2 electricity and natural gas savings under-  
3 taken by State agencies and other entities  
4 if—

5 “(I) a retail electricity or natural  
6 gas distributor did not help finance  
7 measures to achieve these savings;  
8 and

9 “(II) the savings comply with the  
10 rules issued under subsection (c); and

11 “(iii) shall not award credits to any  
12 retail electricity or natural gas distributor  
13 subject to State administration and en-  
14 forcement under subsection (g) unless the  
15 Secretary has determined that the adminis-  
16 tration and enforcement are at least equiv-  
17 alent to administration and enforcement by  
18 the Secretary.

19 “(B) AMOUNT OF CREDITS.—A credit cer-  
20 tified by the Secretary under this subsection—

21 “(i) shall equal 1,000 kilowatt-hours,  
22 in the case of an electricity savings credit;  
23 or

24 “(ii) shall equal 10 therms, in the  
25 case of a natural gas savings credit.

1 “(3) TREATMENT OF CREDITS.—

2 “(A) USE OF CREDITS.—A credit may be  
3 counted toward compliance with the perform-  
4 ance standard only once.

5 “(B) PROPERTY RIGHTS.—An electricity or  
6 natural gas savings credit certified under this  
7 subsection shall not be considered to be a prop-  
8 erty right.

9 “(C) REDUCTION AND TERMINATION OF  
10 CREDITS.—Nothing in this section or any other  
11 provision of the law limits the authority of the  
12 United States to reduce or terminate a credit  
13 certified under this subsection.

14 “(4) FEE.—

15 “(A) IN GENERAL.—To receive certifi-  
16 cation of an electricity or natural gas savings  
17 credit under this section, the recipient of the  
18 credit shall pay a fee, calculated by the Sec-  
19 retary, in an amount that is equal to the lesser  
20 of the following:

21 “(i) The administrative costs of  
22 issuing, recording, monitoring the sale or  
23 exchange, and tracking, of the credit.

24 “(ii) For the years 2009 and 2010, 5  
25 percent of the fair market value of the

1 credit, as determined by the Secretary, and  
2 for the years 2011 and thereafter, 3 per-  
3 cent of the fair market value of the credit,  
4 as determined by the Secretary.

5 “(B) USE OF FEES BY SECRETARY.—Sub-  
6 ject to annual appropriation, the Secretary shall  
7 use amounts equivalent to the fees paid under  
8 this paragraph to pay administrative costs de-  
9 scribed in subparagraph (A)(i). If receipts ex-  
10 ceed the administrative costs incurred by the  
11 Secretary in any two consecutive fiscal years,  
12 the Secretary shall, not later than January 1 of  
13 the first fiscal year thereafter, reduce the fee  
14 accordingly.

15 “(5) CREDIT SALE AND USE.—

16 “(A) SALE.—A retail electric or natural  
17 gas distributor may sell a credit certified under  
18 this subsection to any other entity, and other  
19 entities may sell such credit to a retail electric  
20 or natural gas distributor or any other entity,  
21 in accordance with accounting and verification  
22 procedures contained in rules issued by the Sec-  
23 retary under paragraph (1).

24 “(B) USE.—A credit certified under this  
25 subsection and sold under subparagraph (A)

1           may be used by a purchasing retail electricity  
2           or natural gas distributor for purposes of com-  
3           plying with the performance standard.

4           “(C) DURATION OF VALIDITY.—A credit  
5           certified under this subsection may only be used  
6           for compliance with this section for 3 years  
7           from the date issued.

8           “(6) CREDIT BORROWING.—(A) During the  
9           first year covered by the performance standard, a re-  
10          tail electricity or natural gas distributor that has  
11          reason to believe that the distributor will not have  
12          sufficient electricity or natural gas savings credits to  
13          comply with the performance standard may—

14               “(i) submit a plan to the Secretary  
15               demonstrating that the retail electricity or  
16               natural gas distributor will earn or acquire  
17               sufficient credits within the subsequent 2  
18               calendar years that would enable the retail  
19               electricity or natural gas distributor to  
20               meet the performance standard for all  
21               three calendar years; and

22               “(ii) upon the approval of the plan by  
23               the Secretary, apply credits expected to be  
24               earned or acquired within the subsequent 2

1           calendar years to meet the performance  
2           standard for the applicable calendar year.

3           “(B) Any retail electricity or natural gas dis-  
4           tributor that has submitted such a plan shall, by  
5           March 31 of the fourth calendar year, submit to the  
6           Secretary the credits necessary to repay all credits  
7           borrowed.

8           “(7) BUYOUT OPTION.—

9           “(A) IN GENERAL.—An electricity or nat-  
10          ural gas distributor may elect to comply with  
11          this section for any calendar year by paying to  
12          the certified Electric and Natural Gas Savings  
13          Corporation not later than March 31 of the fol-  
14          lowing year, a fee of 5 cents per kilowatt-hour  
15          or 50 cents per therm, for any portion of the  
16          electricity or natural gas savings credit the dis-  
17          tributor would otherwise be obligated to achieve  
18          for the year.

19          “(B) USE OF BUYOUT FEES.—The Electric  
20          and Natural Gas Savings Corporation shall—

21                 “(i) deposit fees received under sub-  
22                 paragraph (A) in an escrow account estab-  
23                 lished by the Corporation; and

24                 “(ii) periodically distribute amounts in  
25                 the escrow account to States requesting

1           such funds for use in creating electricity or  
2           natural gas savings at customer facilities.  
3       States requesting funds from the account estab-  
4       lished by the Corporation shall submit specific  
5       program proposals, including funds requested,  
6       estimated savings and measure lifetime(s), and  
7       estimated cost per kWh or therm saved. The  
8       Corporation shall develop guidelines for these  
9       submissions. The Corporation shall distribute  
10      funds based on the following criteria: Estimated  
11      savings per dollar of funds provided from the  
12      escrow account, maximizing consumer opportu-  
13      nities to participate across all States, and, be-  
14      ginning in year 3, past history of each State in  
15      meeting energy savings and cost-effectiveness  
16      targets.

17           “(C) ELECTRIC AND NATURAL GAS SAV-  
18      INGS CORPORATION.—

19           “(i) ESTABLISHMENT AND CERTIFI-  
20      CATION.—Any person may submit an ap-  
21      plication to the Secretary for the establish-  
22      ment and certification of a not-for-profit  
23      corporation, to be known as the Electric  
24      and Natural Gas Savings Corporation, to  
25      carry out this paragraph. The Secretary

1 shall certify the corporation if the Sec-  
2 retary determines that the corporation has  
3 submitted the most qualified application  
4 indicating capability to carry out this para-  
5 graph. The Secretary may revoke such cer-  
6 tification at any time for good cause, and  
7 in any such case, the Secretary may accept  
8 applications from other persons and certify  
9 another person as the Electric and Natural  
10 Gas Savings Corporation.

11 “(ii) AUTHORITY OF CORPORATION.—  
12 No person may distribute more than  
13 800,000 megawatt-hours of electric energy  
14 or more than 1 billion cubic feet of natural  
15 gas to consumers in the United States for  
16 purposes other than resale in any calendar  
17 year, including electricity or natural gas  
18 supplied by unregulated suppliers, regard-  
19 less of whether such suppliers are affiliated  
20 or unaffiliated with the distributor unless  
21 such person complies with requirements es-  
22 tablished by the Corporation for the pay-  
23 ment of fees under this paragraph.

24 “(iii) STATUS OF CORPORATION.—The  
25 Corporation shall not be treated as a de-



1           partment, agency, or instrumentality of the  
2           United States for any purpose.

3           “(iv) BOOKS AND RECORDS.—The  
4           books and records of the Corporation shall  
5           be available to the public at reasonable  
6           hours and under reasonable conditions,  
7           without charge.

8           “(v) PENALTY.—Any person who vio-  
9           lates clause (ii) of this subparagraph shall  
10          be subject to a civil penalty to be assessed  
11          and collected by the Secretary in the  
12          amount equal to three times the total of  
13          the fees which are due and payable to the  
14          corporation under this paragraph.

15       “(e) ENFORCEMENT OF COMPLIANCE.—

16           “(1) IN GENERAL.—If a State regulatory au-  
17          thority with jurisdiction over a retail electricity or  
18          natural gas distributor notifies the Secretary that  
19          the State regulatory authority will enforce compli-  
20          ance by the distributor with the performance stand-  
21          ard under this section, the State regulatory author-  
22          ity shall have the authority to administer and en-  
23          force the performance standard for the distributor  
24          under State law.

1           “(2) AUTHORITY OF SECRETARY.—The Sec-  
2       retary shall administer and enforce the performance  
3       standard for all electricity and natural gas distribu-  
4       tors for which a State regulatory authority described  
5       in paragraph (1) has not notified the Secretary as  
6       described in that paragraph.

7           “(3) COMPLIANCE REPORT.—Not later than  
8       July 1, 2010, and every 2 years thereafter, each re-  
9       tail electricity and natural gas distributor shall sub-  
10      mit a compliance report conforming to the provisions  
11      of the rule described in subsection (c)(3) to either—

12           “(A) the appropriate State regulatory au-  
13      thority, if the authority has notified the Sec-  
14      retary as described in paragraph (1); or

15           “(B) the Secretary.

16           “(4) FAILURE TO COMPLY.—

17           “(A) IN GENERAL.—In the case of any re-  
18      tail electricity or natural gas distributor for  
19      which the Secretary is enforcing compliance  
20      with the standards under this section, if the  
21      distributor fails to comply with the performance  
22      standard for more than one calendar year, the  
23      Secretary shall—

24           “(i) determine the number of kilowatt-  
25      hours of electricity savings, or therms of

1 natural gas savings, by which the dis-  
2 tributor has fallen short of meeting the  
3 performance standard; and

4 “(ii) by order, require the distributor,  
5 after notice and opportunity for hearing, to  
6 deposit in the escrow account established  
7 under paragraph (8)(B) of subsection (e)  
8 an amount equal to 6.0 cents per kilowatt-  
9 hour for each such kilowatt hour, and 60  
10 cents per therm for each such therm.

11 “(B) JUDICIAL REVIEW OF ORDERS.—

12 “(i) IN GENERAL.—A retail electricity  
13 or natural gas distributor ordered to make  
14 a payment under subparagraph (A)(ii)  
15 may, not later than 60 days after the date  
16 of issuance of the order, bring a civil ac-  
17 tion in the United States Court of Appeals  
18 for the District of Columbia for judicial re-  
19 view of the order.

20 “(ii) REMEDIES.—The court specified  
21 in clause (i) shall have jurisdiction to enter  
22 a judgment affirming, modifying, or set-  
23 ting aside an order that is the subject of  
24 a civil action brought under that clause, or

1 remanding the order, in whole or in part,  
2 to the Secretary.

3 “(f) INFORMATION COLLECTION.—The Secretary  
4 may collect any information necessary to verify and audit  
5 each of the following:

6 “(1) The annual electric energy sales, natural  
7 gas sales, electricity savings, and natural gas savings  
8 of any entity applying for electricity or natural gas  
9 savings credits under this section.

10 “(2) The validity of electricity or natural gas  
11 savings credits submitted by a retail electricity or  
12 natural gas distributor to the Secretary.

13 “(3) The quantity of electricity and natural gas  
14 sales of all retail electricity and natural gas distribu-  
15 tors.

16 “(g) STATE LAW.—

17 “(1) IN GENERAL.—Nothing in this section su-  
18 persedes or otherwise affects any State or local law  
19 or regulation requiring or otherwise relating to elec-  
20 tricity or natural gas savings to the extent that the  
21 State or local law or regulation contains more strin-  
22 gent savings requirements or has different proce-  
23 dures for buyout or penalties than those contained  
24 in this section.

1           “(2) SITE-SPECIFIC SAVINGS.—A State may re-  
2       quire the performance standard for electricity or  
3       natural gas savings of any distributor within its ju-  
4       risdiction to be achieved by measures undertaken—

5           “(A) within the State;

6           “(B) within the service territory of any re-  
7       gional transmission organization serving the  
8       State;

9           “(C) within any group of States partici-  
10      pating in a regional program for the control of  
11      green house gas emissions; or

12          “(D) within any airshed designated by the  
13      State.

14          “(3) TREATMENT UNDER STATE LAW.—A retail  
15      electricity or natural gas distributor that achieves  
16      electricity or natural gas savings under this section  
17      in accordance with any State or local savings re-  
18      quirement specifically applicable to such distributor  
19      shall be entitled to full credit under this section for  
20      the savings to the extent that the savings meet the  
21      requirements of this section (including regulations  
22      issued under this section), including measurement,  
23      verification, and monitoring requirements.

24          “(h) DEVELOPMENT OF MODEL PROVISIONS.—Not  
25      later than 18 months after the date of enactment of this

1 section, the Federal Energy Regulatory Commission shall,  
2 following public notice and comment, develop and publish  
3 model provisions for adoption by State utility regulatory  
4 commissions regarding each of the following:

5           “(1) REVENUE STABILITY AND INCENTIVES  
6       FOR DISTRIBUTORS.—Policies for rate-setting and  
7       return on investment for State-regulated electricity  
8       and natural gas distributors that participate in suc-  
9       cessful, cost-effective energy efficiency programs.  
10      Such model language shall include provisions for de-  
11      coupling the earnings of such regulated entities from  
12      full dependence on the volume of electricity or nat-  
13      ural gas distributed by them to customer facilities.  
14      Such model language shall also include provisions  
15      for policies for cost recovery and other financial in-  
16      centives, such that electric and gas utility investors  
17      are rewarded similarly for similar levels of invest-  
18      ment in customer energy efficiency and in conven-  
19      tional utility assets and that regulated utilities are  
20      encouraged to include end-use efficiency measures  
21      and utility-owned, customer-owned, or third party-  
22      owned CHP systems in electric capacity and trans-  
23      mission and distribution plans.

24           “(2) NONDISCRIMINATORY IDENTIFICATION OF  
25      COST-EFFECTIVE SAVINGS OPPORTUNITIES.—Estab-

1       lishing a public, nondiscriminatory bidding process  
2       open to customers and demand side management  
3       service providers to identify cost-effective electricity  
4       or natural gas savings opportunities within a retail  
5       electricity or natural gas distributor's service area.  
6       The model bidding plan shall provide for a dis-  
7       tributor to procure all or a portion of its proposed  
8       savings measures, including measures proposed by  
9       the distributor or its affiliates, in cost-effective rank  
10      order. The model plan shall also address the process  
11      that will be used by the distributor to identify and  
12      obtain further electricity or natural gas savings in  
13      the event that insufficient savings are procured  
14      through the bid process.

15           “(3) DEVELOPMENT OF MODEL LANGUAGE ON  
16      REVENUE DECOUPLING AND SHAREHOLDER INCEN-  
17      TIVES IN RATEMAKING POLICIES.—Rate-setting and  
18      earnings for State-regulated electricity and natural  
19      gas distributors that participate in successful, cost-  
20      effective energy efficiency programs. Such model  
21      language shall include, but not be limited to, rec-  
22      ommendations for decoupling the earnings of such  
23      regulated entities from full dependence on the vol-  
24      ume of electricity or natural gas distributed by them  
25      to customer facilities. Such model language shall

1       also include recommendations for policies for cost re-  
2       covery and shareholder incentives, such that electric  
3       and gas utility investors are rewarded similarly for  
4       similar levels of investment in customer energy effi-  
5       ciency and in conventional utility assets.

6       “(i) STATE ADOPTION OF FERC MODEL PROVI-  
7       SIONS.—Each State utility regulatory authority shall  
8       adopt the model provisions referred to in subsection (h)  
9       in the same manner and subject to the same rules and  
10      review as apply in the case of standards referred to in  
11      section 113(b) and 303(b). For purposes of any provision  
12      of title I or III of this Act, the model provisions referred  
13      to in subsection (h) shall be treated as standards under  
14      section 113(b) (in the case of State regulated electricity  
15      distributors) or 303(b) (in the case of natural gas distribu-  
16      tors), except that in the case of such model provisions,  
17      any reference contained in this Act to the date of enact-  
18      ment of this Act shall be deemed to be a reference to the  
19      date of enactment of this section. Each such State utility  
20      regulatory authority shall shall adopt the model provisions  
21      not later than 24 months after the date of enactment of  
22      this section in the case of paragraphs (1) and (2) of sub-  
23      section (h) or 42 months after such date of enactment in  
24      the case of paragraph (3) of subsection (h).”.



- 1 (b) TABLE OF CONTENTS.—The table of contents for
- 2 title VI of such Act is amended by adding the following
- 3 new items at the end thereof:

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Efficiency resource standard for retail electricity and natural gas distributors.”.

